

## REMARKS

The Office Action dated November 5, 2008 has been reviewed and the comments of the U.S. Patent and Trademark Office have been considered. The above amendments and the following remarks are respectfully submitted to place the application in condition for allowance.

### 1. CLAIM STATUS

Claims 1-2, 4 – 9, are currently pending in this application, of which claims 1, 8 and 9 are independent claims. Claims 1- 2 and 4 – 9 are currently amended. Applicant respectfully submits that no new matter has been added by the amendments. Support for the amended claims may be found at, for example specification at Page 5, ll. 11 – 21, Page 6, ll. 1 – 14, Page 8, ll. 1 – 2, and Page 17, ll 16 – 21.

### 2. PRIORITY

Applicant respectfully submits that the priority has been addressed in Applicant's responses to prior Office Actions. See for example, Applicant's response file December 17, 2002.

### 3. CLAIMS 1, 2 AND 4 - 9 ARE PATENTABLE UNDER 35 U.S.C. 103(A) OVER SHOHAM ET AL., U.S. 6,584,451 (HEREINAFTER "SHOHAM"), IN VIEW OF OFFICIAL NOTICE AND FURTHER IN VIEW OF HANSON, U.S. 5,974,398 (HEREINAFTER "HANSON") AND FURTHER IN VIEW OF FUSZ, U.S. 7,133,835 (HEREINAFTER "FUSZ") AND FURTHER IN VIEW OF TELEZOO (HEREINAFTER "TELEZOO").

The burden is on the Examiner to make a *prima facie* case of obviousness, which requires an objective analysis as set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). In *KSR International v. Teleflex Inc.*, 127 S.Ct 1727, 82 USPQ2d 1385 (2007), the Court affirmed that this analysis includes the following factual inquiries: (1) determining the scope and content of the prior art; (2) ascertaining the differences between the claimed invention

and the prior art; and (3) resolving the level of ordinary skill in the pertinent art. The Examination Guidelines for Determining Obviousness Under 35 U.S.C. § 103 In View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* state that, having undertaken the factual inquiries of *Graham*, a rejection under 35 U.S.C. § 103 may be supported by one or more of the following rationales: (1) combining prior art elements according to known methods to yield predictable results; (2) simple substitution of one known element for another to obtain predictable results; (3) use of a known technique to improve similar devices in the same way; (4) applying a known technique to a known device ready for improvement to yield predictable results; (5) choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (6) variations that would have been predictable to one of ordinary skill in the art; and (7) some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine the prior art reference teachings to arrive at the claimed invention. 72 Fed. Reg. 57526, at 57529 (October 10, 2007). Each of the above-noted rationales requires predictability in the art and/or a reasonable expectation of success, and the Examiner must consider objective evidence which rebuts such predictability and reasonable expectation of success. This objective evidence or secondary considerations may include unexpected results and/or failure of others (*e.g.*, evidence teaching away from the currently claimed invention), evidence of commercial success, and long-felt but unsolved needs, as found in the specification as-filed or other source. *Id.* When considering obviousness of a combination of known elements, the operative question is “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *KSR* at 1740, 82 USPQ2d at 1396. Here, the Examiner has failed to meet this burden.

The arguments from the Applicant’s previous responses to Office Actions are incorporated within.

Shoham is directed to the use of networked computer systems for implementing an on-line trading market for the selling and purchase of goods and services. (Shoham Col. 1, ll. 11 – 14). Page 3 of the Office Action asserts that “Shoham teaches all the features of the instant claims except as noted below.” However, the applicant contends that Shoham fails to teach,

suggest or disclose the purchase of telecommunication services or the sales area being limited by the seller. Additionally, contrary to the Office Action's assertion that Shoham teaches, "preventing a requester from accepting the identified response after the session is terminated by the requester," (Office Action at Page 4), Shoham in fact teaches that a solution to the problem of a seller "not be able to submit arbitrary new schedules effective immediately and retroactively," (Shoham at Col. 5 ll. 60 - 65), was to "delay the new schedule by an hour and let everyone committed under the old schedule keep their deals." (Shoham at Col. 6 ll. 1 - 8). Shoham also teaches that "The OBCS could go through multiple rounds of bid acceptance and price discovery, possibly discovering the price after every buyer bid. These would have to end eventually, either because a set time had elapsed, the system had received few new bids recently, or the seller's supply had been exhausted." (Shoham at Col. 8 ll. 18-25). Preventing a seller from creating a new schedule and permitting the buyers who committed under the old schedule to keep their deals, was an effort by the OBCS system to prevent sellers from changing their prices arbitrarily as disclosed above, and not "preventing a requester from accepting the identified response after the session is terminated," as recited by the independent claims of the present invention.

Further, Shoham fails to teach, suggest or disclose "establishing a session over a network for considering the purchase of the at least one telecommunication service" as disclosed by the present invention, therefore Shoham cannot teach, suggest, or disclose "preventing a requester from accepting the identified response after the session is terminated." A session requires a start and stop time, and Shoham fails to teach, suggest or disclose this. Thus, the OBCS system terminating multiple rounds of bid acceptance and price discovery because "a set time had elapsed," as discussed above, may not be considered the same as "preventing a requester from accepting the identified response after the session is terminated," because Shoham fails to disclose a session, and therefore the "set time had elapsed," may be measured from multiple events like the last new seller schedule and not necessarily from when the buyer first accesses the system as suggested by the present invention. Moreover, all of the teachings of Shoham discussed above pertain to actions of the seller, rather to actions of the buyer as recited

by independent claims of the present invention. Therefore, Shoham fails to teach all of the claimed limitations of the present invention.

Hanson, another reference cited by the Examiner to teach “matching buyers to sellers in a specified geographical region,” (Office Action at Page 4), is directed at a method an apparatus enabling user control of advertising carried by interactive information and entertainment services. (Hanson Col. 1, ll. 9 – 11). In fact, Hanson teaches “us[ing] customer interest profiles and on-line service usage data to identify particular user characteristics to advertisers. The ... advertisers define user characteristics of particular desirability and place a dollar value on having messages viewed by individual users based on the desirability of the user.” (Hanson Col. 1, ll. 47 – 53). And, “display [ing] on the user's display device of the advertisers most willing to... pay for the user's attention and the dollar amount bid. If the user chooses to see a particular advertiser's message, then the user is reimbursed, or a credit is applied to the user's on-line account for the amount of the bid promised by the advertiser whose message was viewed. Other types of go reward can also be provided to the user, such as, merchandise or services.” (Hanson Col. 1, ll. 54 – 59). Hanson also discloses an example of Wilson Sports advertising offer targeting users live in a “geographic area,” (Hanson at Col. 7, ll. 14), and “geographic information...as an illustration of the type of user characteristics that are of interest to Wilson Sport.” (Hanson at Col. 6, ll. 33 -36). Thus, Hanson teaches the buyers controlling the geographic region, where the goods are purchased, and not presenting a response to a request to purchase telecommunications services, wherein the response is “associated with the seller controlled geographic footprint,” as recited by the independent claims of the present invention. Therefore, Hanson fails to teach all of the claimed limitations of the present invention.

Page 5 of the Office Action asserts that “it would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Shoham limiting the area that a seller wishes to target; because this will reduce costs and increase revenue by only selling to buyers who are local and can be serviced in an expensive manner.” As discussed above, Shoham is directed to general online products and services and not to telecommunication services as claimed by the present invention. Thus, the fact that telecommunications services

may be offered by sellers only to consumers within a particular geographic footprint has no relevance to Shoham's auction site for the purchase of general products. Further, an online seller typically has little interest in the geographic location of its customer. Shoham teaches "[t]he underlying concept of the OBCS is to aggregate buying power to negotiate a volume discount." (Shoham at Col. 5, ll. 16 -17). Therefore, the greater the audience of purchasers that can be reached by a system such as the OBCS system disclosed in Shoham the more profitable the system. Further, Shoham both inherently and explicitly teaches away from limiting the pooling of consumers based on geography. See columns 1 and 2. Shoham teaches aggregating as many buyers as possible who are widely dispersed geographically through a vehicle like the Internet. See columns 1 and 2. Imposing a geographic restriction would therefore limit the benefit of such aggregation. Because of the Internet and similar networks, Shoham teaches that "proximity is not a barrier in the present system." See column 2, lines 27 through 28. Even if the teachings in Hanson were as asserted, combining a geographic limitation from Hanson would be directly counter to the primary goals and teachings of Shoham and would limit the effectiveness of Shoham's invention. A rejection under 35 USC §103 cannot be sustained when one of the references clearly teaches away from the very feature that is asserted to be taught by the other reference. Accordingly, the applicants respectfully request that the Examiner withdraw the rejection of the claims under 35 U.S.C. § 103.

Additionally, Fusz, another reference cited by the Examiner, to cure the deficiencies is directed at product purchase systems, more particularly to a product system accessible via a communications network which facilitates the purchase of products. (Fusz Col. 11. 14 -17). Fusz teaches, a "present exchange system...[that] serves as a mechanism to drive sellers towards offering a lower price than currently available for products or services purchased by consumers...the lowest price may be limited to a particular geographic area..." (Fusz at Col. 2, ll. 5 – 20). The "[s]ystem ... also is configured to determine, upon receiving a buyer command, a low market price ... for a selected ... specific configuration within a designated geographic region. Particularly, a potential buyer at a buyer site ... may want to place a specific 'offer to buy' or identify a specific desired product configuration and a particular geographic region in

which such buyer would be willing to travel within ... to obtain a product.” (Fusz at Col. 5 ll. 60 - 67 ). And, “[w]ith respect to offers to sell database ..., information such as an identification of the seller making an offer, the seller region, and pricing information by brand/model, style and descriptions is stored. Such information identifies, by sellers having specific geographic selling locations, offers to sell certain products.” (Fusz at Col.4 ll. 62 - 67). Thus, Fusz, teaches the lowest selling price being associated with a geographic region or a buyer selection the geographic region where a particular product is available, but fails to teach a response to a request to purchase telecommunications services, wherein the response is “associated with the seller controlled geographic footprint,” as recited by the independent claims of the present invention. Additionally, reducing price for a product based on geographic region is not an “indication associated with the seller controlled geographic footprint wherein the telecommunication service is available” as recited by the independent claims of the present invention. Therefore, Fusz fails to teach all of the claimed limitations of the present invention.

As discussed above, because Fusz teaches the buyer controlling the geographic location, the Applicant respectfully submits that it would not have been “obvious to a person having ordinary skill in the art at the time of the invention to include in Shoham limiting the area that a seller wishes to target; because this will reduce costs and increase revenue by only selling to buyers who are local and can be serviced in an expensive manner.” (Office Action at Page 5). Thus, the Office Action had not provided sufficient motivation to combine this reference with Shoahm and Hanson to cure the deficiencies in the Office Action’s assertions above.

Telezoo, another reference cited by the Examiner, fails to cure the deficiencies of the Shoham, Hanson and Fusz references. Telezoo, an article that describes Telezoo.com’s introduction of a “First ‘Request for Proposal’ Internet Site for Telecommunications Vendors and Buyers,” (Telezoo), discloses a section of its e-commerce site, “that delivers requests for Proposals (RFP’s) from telecommunications and IT buyers to vendors and service providers...Telezoo.com offers the serious telecommunications buyer the power to find the products they need and to compare products side-by-side to make an informed buying decision.” (Telezoo). However, this reference fails to teach presenting a response to a request to purchase

telecommunications services, wherein the response is “associated with the seller controlled geographic footprint,” or “preventing a requester from accepting the identified response after the session is terminated” as recited by the independent claims of the present invention. Therefore, Telezoo fails to teach all of the claimed limitations of the present invention

An e-commerce site facilitates the buying and selling of products or services over electronic systems such as the Internet ([http://en.wikipedia.org/wiki/Electronic\\_commerce](http://en.wikipedia.org/wiki/Electronic_commerce)). “Telezoo.com is an e-Commerce site,” (Telezoo), comprised of professions with sophisticated skills including “more than a dozen executives, engineers and analysts...” (Telezoo) that only developed a portal to compare telecommunication services, and receive RFPs but failed to include selling telecommunication services as disclosed by the present invention. Therefore, the Applicant respectfully submits that contrary to the Office Action’s assertion, “it would [not] have been obvious to a person having ordinary skill in the art at the time of the invention to include selling telecommunications, because this would increase the revenue to a site by including what might amount to a billion dollars in sales through the portal.” (Office Action at Page 5), because the Telezoo reference discussed above shows that it was not have been obvious to a person with sophisticated skills “in the art at the time of the invention to include selling telecommunications.” (Office Action at Page 5),

Page 4 of the Office Action asserts that “Shoham does not expressly disclose the purchasing of telecommunication services. Shoham does disclose online sales useful for a plurality of generic goods and services...not including telecommunication services explicitly is only found in the non-functional data stored. Data identifying a product useful to a particular business is not functionally related to the substance of the invention.” (Office Action at Pages 4 – 5). Contrary to this assertion, the seller controlled geographic footprint is one of many types of data relevant to telecommunications services that directly impact the functionality of the claimed invention. A transaction system for purchasing telecommunications services includes many functional differences that require the inclusion of data that is irrelevant to a transaction system for purchasing other products such as consumer products. Therefore, the claimed recitation of a

seller controlled geographic footprint is not merely descriptive material and it is not disclosed, taught, or suggested by the asserted combination of the references cited above.

Page 6 of the Office Action asserts that “it must be recognized that any judgment based on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant’s disclosure, such a reconstruction is proper.” Thus, an Examiner should refrain from impermissibly using the teachings of the instant application to “find” the elements in the prior art with the advantage of hindsight. In *KSR*, the Court cautioned against the reliance of arguments based upon the disclosure of the claimed invention to read into the prior art the teachings of the claimed invention. *See, KSR* at 1742, (“A fact finder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning.”). Here, the examiner has used the claimed invention as a roadmap to hunt for the elements of the claimed invention, but has failed to provide sufficient motivation for combining these references, or show that combining these references will lead to predictable results. Accordingly, the Applicant respectfully requests that the examiner withdraw the rejection of the claims under 35 U.S.C. § 103.

The combination of Shoham, Hanson, Fusz and Telezoo would not yield predictable results. As noted above, Shoham does not disclose the sales area being limited by the seller, purchase of telecommunication devices, or a session as set forth in the independent claims of the present invention. The examiner alleges that this deficiency is cured by Hanson, Fusz and Telezoo, but the combination of the elements disclosed by the secondary references would not yield predictable results. Hanson discloses selection of which advertisements to embed in content to a user of interactive information or entertainment services based on a buyer’s geographic location. Fusz discloses presenting a response to a request to purchase telecommunications services, wherein the response is “associated with the seller controlled geographic footprint.”



The Applicant respectfully submits, that a combination of the above references cited by the Office Action, fails to teach all of the limitations of the present invention. Therefore, Claims 1, 8 and 9 are patentable over Shoham in view of Official Notice further in view of Hanson further in view of Fusz and further in view of Telezoo.

For at least the foregoing reasons, Applicants respectfully assert that independent claims 1, 8 and 9 are patentable over Shoham in view of Hanson further in view of Official Notice further in view of Hanson further in view of Fusz and further in view of Telezoo. Dependent claims 2 and 4 - 7 depend from independent claim 1 and add further patentable features to the patentable features of the independent claim.

Therefore, claims 1, 2, and 4 - 9 are patentable over Shoham in view of Official Notice further in view of Hanson further in view of Fusz and further in view of Telezoo. Withdrawal of the rejection and allowance of all claims are requested.

### **CONCLUSION**

In view of the above amendment, Applicant believes the pending application is in condition for allowance. Applicant respectfully submits that if a discussion of the application would speed the prosecution of the application, the Examiner is invited to contact the Applicant's representative at the address and phone number listed below.

Applicant submits concurrently a request for a three-month extension of time under 37 C.F.R. § 1.136, a Request for Continued Examination pursuant to 37 C.F.R. § 1.114, and the accompanying fees. Please charge our Credit Card in the amount of \$960.00 covering the fees set forth in 37 C.F.R. § 1.17(e) and 1.17(a). In the event that any additional extensions of time are necessary to prevent the abandonment of this patent application, then such extensions of time are petitioned. The U.S. Patent and Trademark Office is authorized to charge any additional fees that may be required in conjunction with this submission to Deposit Account Number 50-2228.

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### **Attached:**

Document from Wikipedia defining Electronic Commerce

# Electronic commerce

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**Electronic Commerce**, commonly known as (electronic marketing) **e-commerce** or **eCommerce**, consists of the buying and selling of products or services over electronic systems such as the Internet and other computer networks. The amount of trade conducted electronically has grown extraordinarily with widespread Internet usage. A wide variety of commerce is conducted in this way, spurring and drawing on innovations in electronic funds transfer, supply chain management, Internet marketing, online transaction processing, electronic data interchange (EDI), inventory management systems, and automated data collection systems. Modern electronic commerce typically uses the World Wide Web at least at some point in the transaction's lifecycle, although it can encompass a wider range of technologies such as e-mail as well.

A large percentage of electronic commerce is conducted entirely electronically for virtual items such as access to premium content on a website, but most electronic commerce involves the transportation of physical items in some way. Online retailers are sometimes known as e-tailers and online retail is sometimes known as **e-tail**. Almost all big retailers have electronic commerce presence on the World Wide Web.

Electronic commerce that is conducted between businesses is referred to as business-to-business or B2B. B2B can be open to all interested parties (e.g. commodity exchange) or limited to specific, pre-qualified participants (private electronic market). Electronic commerce that is conducted between businesses and consumers, on the other hand, is referred to as business-to-consumer or B2C. This is the type of electronic commerce conducted by companies such as Amazon.com.

Electronic commerce is generally considered to be the sales aspect of e-business. It also consists of the exchange of data to facilitate the financing and payment aspects of the business transactions.

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## History

### Early development

The meaning of electronic commerce has changed over the last 30 years. Originally, electronic commerce meant the facilitation of commercial transactions electronically, using technology such as Electronic Data Interchange (EDI) and Electronic Funds Transfer (EFT). These were both introduced in the late 1970s, allowing businesses to send commercial documents like purchase orders or invoices electronically. The growth and acceptance of credit cards, automated teller machines (ATM) and telephone banking in the 1980s were also forms of electronic commerce. Another form of e-commerce was the airline reservation system typified by Sabre in the USA and Travicom in the UK. Online shopping was invented in the UK in 1979 by Michael Aldrich and during the 1980s it was used extensively particularly by auto manufacturers such as Ford, Peugeot-Talbot, General Motors and Nissan. From the 1990s onwards, electronic commerce would additionally include enterprise resource planning systems (ERP), data mining and data warehousing.

The earliest example of many-to-many electronic commerce in physical goods was the Boston Computer Exchange, a

### Part of a series on Electronic commerce



**Online goods and services**  
Streaming media  
Electronic books  
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**Retail services**  
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**Marketplace services**  
Trading communities  
Auctions · Online wallet  
Advertising  
Price comparison service

**E-procurement**

marketplace for used computers launched in 1982. The first online information marketplace, including online consulting, was likely the American Information Exchange, another pre-Internet online system introduced in 1991.

Until 1991, commercial enterprise on the Internet was strictly prohibited.<sup>[1]</sup> Although the Internet became popular worldwide around 1994, it took about five years to introduce security protocols and DSL allowing continual connection to the Internet. And by the end of 2000, a lot of European and American business companies offered their services through the World Wide Web. Since then people began to associate a word "ecommerce" with the ability of purchasing various goods through the Internet using secure protocols and electronic payment services.

## Timeline

- 1990: Tim Berners-Lee writes the first web browser, WorldWideWeb, using a NeXT computer.
- 1992: J.H. Snider and Terra Ziporyn publish *Future Shop: How New Technologies Will Change the Way We Shop and What We Buy*. St. Martin's Press. ISBN 0312063598.
- 1994: Netscape releases the Navigator browser in October under the code name Mozilla. Pizza Hut offers pizza ordering on its Web page. The first online bank opens. Attempts to offer flower delivery and magazine subscriptions online. Adult materials also becomes commercially available, as do cars and bikes. Netscape 1.0 is introduced in late 1994 SSL encryption that made transactions secure.
- 1995: Jeff Bezos launches Amazon.com and the first commercial-free 24 hour, internet-only radio stations, Radio HK and NetRadio start broadcasting. Dell and Cisco begin to aggressively use Internet for commercial transactions. eBay is founded by computer programmer Pierre Omidyar as AuctionWeb.
- 1998: Electronic postal stamps can be purchased and downloaded for printing from the Web.
- 1999: Business.com sold for US \$7.5 million to eCompanies, which was purchased in 1997 for US \$149,000. The peer-to-peer filesharing software Napster launches.
- 2000: The dot-com bust.
- 2002: eBay acquires PayPal for \$1.5 billion<sup>[2]</sup>. Niche retail companies CSN Stores and NetShops are founded with the concept of selling products through several targeted domains, rather than a central portal.
- 2003: Amazon.com posts first yearly profit.
- 2007: Business.com acquired by R.H. Donnelley for \$345 million<sup>[3]</sup>.
- 2008: US eCommerce and Online Retail sales projected to reach \$204 billion, an increase of 17 percent over 2007<sup>[4]</sup>.

## Business applications

Some common applications related to electronic commerce are the following:

- Email
- Enterprise content management
- Instant messaging
- Newsgroups
- Online shopping and order tracking
- Online banking
- Online office suites
- Domestic and international payment systems
- Shopping cart software
- Teleconferencing
- Electronic tickets

## Government regulations

In the United States, some electronic commerce activities are regulated by the Federal Trade Commission (FTC). These activities include the use of commercial e-mails, online advertising and consumer privacy. The CAN-SPAM Act of 2003 establishes national standards for direct marketing over e-mail. The Federal Trade Commission Act regulates all forms of advertising, including online advertising, and states that advertising must be truthful and non-deceptive.<sup>[5]</sup> Using its authority under Section 5 of the FTC Act, which prohibits unfair or deceptive practices, the FTC has brought a number of cases to enforce the promises in corporate privacy statements, including promises about the security of consumers' personal information.<sup>[6]</sup> As result, any corporate privacy policy related to e-commerce activity may be subject to enforcement by the FTC.

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008, which came into law in 2008, amends the Controlled Substances Act to address online pharmacies.<sup>[7]</sup>

## Forms

Contemporary electronic commerce involves everything from ordering "digital" content for immediate online consumption, to ordering conventional goods and services, to "meta" services to facilitate other types of electronic commerce.

On the consumer level, electronic commerce is mostly conducted on the World Wide Web. An individual can go online to purchase anything from books or groceries, to expensive items like real estate. Another example would be online banking, i.e. online bill payments, buying stocks, transferring funds from one account to another, and initiating wire payment to another country. All of these activities can be done with a few strokes of the keyboard.

On the institutional level, big corporations and financial institutions use the internet to exchange financial data to facilitate domestic and international business. Data integrity and security are very hot and pressing issues for electronic commerce today.

## See also

- Dot-com company
- E-government
- E-business
- Internet business
- Mobile commerce
- Paid content
- Social commerce

## Notes

1. ^ Kevin Kelly: We Are the Web Wired magazine, Issue 13.08, August 2005
2. ^ "eBay acquires PayPal". eBay. <http://investor.ebay.com/releasedetail.cfm?ReleaseID=84142>.
3. ^ "Press Release". Domain Name Wire. <http://domainnamewire.com/2007/07/26/rh-donnelley-acquires-businesscom-for-345m/>.
4. ^ "The State of Retailing Online 2008". Forrester Research, Inc.. [http://www.shop.org/c/journal\\_articles/view\\_article\\_content?groupId=1&articleId=702&version=1.0](http://www.shop.org/c/journal_articles/view_article_content?groupId=1&articleId=702&version=1.0).
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## External links

- U.S. Federal Trade Commission E-Commerce Fact Sheets
- US Small Business Guide to E-Commerce Laws and Regulations

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